

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

VIRGINIA P. FERGUSON, )  
 ) CASE NO. C12-0470-RSL-MAT  
Plaintiff, )  
 )  
v. )  
 ) REPORT AND RECOMMENDATION  
CAROLYN W. COLVIN, Acting )  
Commissioner of Social Security,<sup>1</sup> )  
 )  
Defendant. )  
\_\_\_\_\_ )

INTRODUCTION AND DISCUSSION

Plaintiff submitted a motion for an award of attorney’s fees and expenses under the Equal Access to Justice Act (EAJA). (Dkt. 22.) He seeks an award of \$7,870.46 in attorney’s fees and \$27.32 in expenses pursuant to the EAJA, 28 U.S.C. § 2412, for a total award of \$7,897.78. (*Id.* and Dkt. 25 at 4 (including fees for EAJA-related reply).)

The Commissioner objects to a portion of the fees sought. (Dkt. 24.) Asserting

<sup>1</sup> Carolyn W. Colvin, Acting Commissioner of Social Security, is substituted as defendant in this suit. Fed. R. Civ. P. 25(d)(1).

01 plaintiff's counsel expended an unreasonable amount of time drafting the reply brief,  
02 inappropriately included billing for clerical matters, and presented billing entries in block  
03 billing format, the Commissioner seeks a reduction of 5.0 hours from the attorney's fees sought.  
04 (*Id.*) She has no objection to the request for expenses or requested hourly rates.

05 Now, having considered the parties' submissions, along with the remainder of the  
06 record, the Court recommends that plaintiff's motion be GRANTED in part and DENIED in  
07 part for the reasons described below.

08 A. Hours Expended

09 The Court may award EAJA fees for attorney hours reasonably expended by plaintiff's  
10 counsel in this matter. 28 U.S.C. § 2412(d)(2)(A). "[E]xcessive, redundant, or otherwise  
11 unnecessary" hours should be excluded from the fee award. *Hensley v. Eckerhart*, 461 U.S.  
12 424, 434 (1983). The Court must provide a "concise but clear explanation" of its reasons for a  
13 fee award. *Gates v. Deukmejian*, 987 F.2d 1392, 1398 (9th Cir. 1992). *See also Costa v.*  
14 *Comm'r of SSA*, 690 F.3d 1132, 1135 (9th Cir. 2012) (district court must give reasons for  
15 reducing fees; where disparity between fees requested and awarded relatively large, court  
16 should provide specific articulation of reasons for reducing award) (citing *Moreno v. City of*  
17 *Sacramento*, 534 F.3d 1101, 1111 (9th Cir. 2008)).

18 The Commissioner states that the issues in this matter were not novel or complex, and  
19 argues a portion of the hours spent by plaintiff's counsel were not reasonably expended. She  
20 observes, for instance, that plaintiff's counsel billed approximately 6.5 hours for preparation of  
21 the reply brief. The Commissioner notes this time as subsequent to some 29.8 hours expended  
22 drafting the opening brief, and asserts the reply brief "was 13 pages long and contained a

01 recitation of facts and law” from the opening brief, resulting “in nearly one hour per two  
02 pages[.]” (Dkt. 24 at 4.) She argues excessive time billed for the completion of the reply  
03 brief should be excluded. Considering the 5.0 hour reduction sought in total, approximately  
04 1.3 hours of which relate to allegedly clerical matters (*see* Dkt. 24 at 5), the Commissioner  
05 appears to seek a 3.7 hour reduction for excessive hours expended.

06 Plaintiff’s counsel disputes the characterization of this case as routine. Counsel denies  
07 any hours expended were excessive, redundant, or otherwise unnecessary, noting he did not  
08 represent plaintiff prior to the filing of this case in district court, and therefore required more  
09 time for review of the record and the drafting of briefs. Counsel also notes the inclusion of  
10 some significant new evidence submitted to the Appeals Council, requiring additional effort,  
11 and the inclusion of novel legal arguments on several issues in the reply brief.

12 The Commissioner fails to demonstrate plaintiff’s counsel spent an unreasonable  
13 amount of time preparing the reply brief. *Cf. Costa*, 690 F.3d at 1136-37 (rejecting district  
14 court’s reduction of hours by nearly one-third because “the issues in the case were not novel or  
15 complex and . . . the brief was not very long.”; finding reasons “not sufficiently specific given  
16 the magnitude of the reductions.”) The reply brief contained more than a recitation of facts  
17 and law from the opening brief. (*See* Dkt. 18.) It provided useful, relevant, and detailed  
18 discussions of the facts, authority, and administrative record, and was directly responsive to  
19 arguments raised by the Commissioner. The Court, therefore, finds no basis for reducing the  
20 hours spent by plaintiff’s counsel preparing the reply brief.

21 The Court does, however, find a reduction in the hours spent preparing the opening brief  
22 appropriate. As the Court noted in its Report and Recommendation, plaintiff’s assignment of

01 error with regard to the ALJ's consideration of the opinions of Dr. Holly J. Christoferson  
02 consisted in large part of no more than a recitation of that doctor's opinions. (Dkt. 19 at 5  
03 (citing Dkt. 14 at 4-8).) The Court advised the parties in the Briefing Schedule to "not include  
04 a lengthy recitation of background facts or medical evidence[,]" and, rather, to discuss relevant  
05 facts "in the context of specific assignments of error." (Dkt. 11 at 2.) In this case, a four-page  
06 recitation of facts, describing numerous treatment notes, was unnecessary to support the  
07 argument that the ALJ failed to address a single report from Dr. Christoferson assessing  
08 work-related limitations, and failed to comply with the Court's directive in the Briefing  
09 Schedule. The Court, therefore, recommends a reduction of 2.0 hours, finding that a  
10 reasonable estimate of the excessive and unnecessary time spent drafting the fact recitation  
11 associated with Dr. Christoferson.

12 B. Clerical Tasks

13 "[P]urely clerical work or secretarial tasks should not be billed at a paralegal or lawyer's  
14 rate, regardless of who performs them." *Missouri v. Jenkins*, 491 U.S. 274, 288 n. 10 (1989).  
15 In this case, the Commissioner targets the following time entries as consisting of purely clerical  
16 tasks: 0.60 hours for preparation of the summons, complaint and civil worksheet and to  
17 correct IFP filings; and 0.70 hours for EAJA documents. (See Dkt. 22-3.)

18 Plaintiff's counsel denies the inclusion of any clerical work, noting an attorney bears the  
19 ultimate responsibility for drafting and reviewing all documents filed and for ensuring the  
20 accuracy of billing documents. He further observes the minimal amounts of time expended on  
21 these tasks. Counsel also requests an award for 1.5 of the additional 1.8 hours expended  
22 drafting the EAJA-related reply brief, declaration, and proposed order. (Dkt. 25 at 4.)

01 The Court is not persuaded by the Commissioner's contention that the drafting of the  
02 summons, complaint, and civil worksheet, and the correction of the IFP filing constitute purely  
03 clerical tasks, as opposed to necessary legal work performed by an attorney. Moreover, the  
04 minimal amount of time spent on these tasks was reasonable.

05 In addition, the argument concerning the inclusion of the time spent preparing the EAJA  
06 motion and the EAJA reply brief should be rejected. Plaintiff may be awarded fees for hours  
07 reasonably expended in seeking attorney's fees under the EAJA. *See Comm'r, INS v. Jean*,  
08 496 U.S. 154, 162-66 (1990). Here, plaintiff properly seeks reimbursement for a reasonable  
09 number of hours (2.20 hours total) spent on the EAJA briefing. Additionally, in seeking EAJA  
10 fees, "[t]he fee applicant bears the burden of documenting the appropriate hours expended in  
11 the litigation and must submit evidence in support of those hours worked." *Gates*, 987 F.2d at  
12 1397 (citing *Hensley*, 461 U.S. at 433, 437). Accordingly, it appropriately falls within an  
13 attorney's purview to determine the items to include on an EAJA time record and the amounts  
14 to seek for each item, and to award fees based on the time spent performing those tasks. For  
15 this reason, and for the reasons stated above, the Court finds no basis for a reduction of hours  
16 purportedly spent performing clerical work.

17 C. Block Billing

18 The Commissioner also alleges improper block billing. However, "plaintiff's counsel  
19 'is not required to record in great detail how each minute of his time was expended.'" *Fischer*  
20 *v. SJB-P.D. Inc.*, 214 F.3d 1115, 1121 (9th Cir. 2000) (quoting *Hensley*, 461 U.S. at 437 n. 12).  
21 "Instead, plaintiff's counsel can meet his burden - although just barely - by simply listing his  
22 hours and 'identifying the general subject matter of his time expenditures.'" *Id.* (finding

01 denial of fee application an abuse of discretion where the fee request included summaries of  
02 tasks such as “pleadings and pretrial motions”) (quoting *Davis v. City of San Francisco*, 976  
03 F.2d 1536, 1542 (9th Cir. 1992) (quoting *Hensley*, 461 U.S. at 437 n. 12)). Here, plaintiff met  
04 this “basic requirement.” *Id.* In fact, it is not clear how much more detail would be necessary  
05 to evaluate the time entries at issue in this case. (See Dkt. 22-3.) The Court additionally notes  
06 that the Commissioner routinely declines to raise any such objection to the very same billing  
07 practice in numerous EAJA petitions submitted to the Court. This objection, therefore, does  
08 not warrant any deduction in the fees requested.

09 CONCLUSION

10 For the reasons stated above, plaintiff’s motion for an award of attorney’s fees and  
11 expenses (Dkt. 22) should be GRANTED in part and DENIED in part. The Court  
12 recommends that the attorney’s fees in this matter be reduced by 2.0 hours, amounting to  
13 \$368.64 in fees. The Court finds the remaining amount of fees sought, as well as the expenses,  
14 reasonable. Accordingly, the Court recommends plaintiff be awarded attorney’s fees in the  
15 amount of \$7,501.82 and expenses in the amount of \$27.32, for a total award of \$7,529.14. A  
16 proposed order accompanies this Report and Recommendation.

17 DATED this 23rd day of May, 2013.

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19 

20 Mary Alice Theiler  
21 United States Magistrate Judge  
22